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Practitioner's Docket No. 35140.010

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

OFFICE OF PETITIONS

☒ In re application of: Bart D. Hibbs, Tyler MacCready, Phillip T. Tokumaru  
 Application No.: 09/928,038 ~~Group No.~~ and Thomas Zambrano  
 Filed: 09/09/2001 Examiner:

For: METHOD OF AND APPARATUS FOR WAVE ENERGY CONVERSION USING A  
 FLOAT WITH EXCESS BUOYANCY

☒ Patent No.: 6,756,695 B2 Issued: June 29, 2004

\*NOTE: Insert name of inventor(s) and title also for patent where notification is with respect to a maintenance fee payment, also insert application number and filing date, and add Box M. Fee to address.

Commissioner for Patents  
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Gov't. LBX Operations

NOTIFICATION OF ERROR IN PAYMENT OF FEE(S) AS A SMALL ENTITY  
 (37 C.F.R. § 1.28(c))

NOTE: 37 C.F.R. § 1.28(c): "(c) How errors in small entity status are excused. If status as a small entity is established in good faith, and fees as a small entity are paid in good faith, in any application or patent, and it is later discovered that such status as a small entity was established in error, or that through error the Office was not notified of a loss of entitlement to small entity status as required by § 1.27(g)(2), the error will be excused upon: compliance with the separate submission and itemization requirements of paragraphs (c)(1) and (c)(2) of this section, and the deficiency payment requirement of paragraph (c)(2) of this section."

NOTE: 37 C.F.R. § 1.28(c)(1): "Separate submission required for each application or patent. Any paper submitted under this paragraph must be limited to the deficiency payment (all fees paid in error), required by paragraph (c)(2) of this section, for one application or one patent. Where more than one application or patent is involved, separate submissions of deficiency payments (e.g., checks) and itemizations are required for each application or patent. See § 1.4(b)."

CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10\*

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Date: 3/10/09

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Thomas I. Rozsa

(type or print name of person certifying)

\* Only the date of filing (§ 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under § 1.8 continues to be taken into account in determining timeliness. See § 1.703(f). Consider "Express Mail Post Office to Addressee" (§ 1.10) or facsimile transmission (§ 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.

### Erroneous Filing of Small Entity Statement

1. On 12/04/2007, a small entity assertion was erroneously filed in this  
☐ application  
☒ patent
2. This assertion of small entity status in this application and the payment of fee(s) as a small entity was/were made in good faith.

### ERROR

- ✓ 3. It has now been established that such status as a small entity was established in error in good faith as follows:

*(complete the the following applicable item)*

- ☐ Although applicant is a small entity, the small entity statement was, through error and in good faith, not signed by all persons or entities having an interest.
- ☐ Although applicant is a small entity, the small entity statement was, through error and in good faith, not signed by the proper authorized person.
- ☐ Applicant erroneously in good faith believed itself entitled to small entity status, and has now discovered that this is not so.
- ☒ Before the payment of the fee(s) listed below, a change occurred whereby small entity status could no longer be claimed for applicant and, through good faith error, the Office was not notified.
- ☐ Other

### Itemization of the Fee(s) Erroneously Paid as Small Entity

NOTE: 37 C.F.R. § 1.28(c)(2): "Payment of deficiency owed. The deficiency owed, resulting from the previous erroneous payment of small entity fees, must be paid.

(i) Calculation of the deficiency owed. The deficiency owed for each previous fee erroneously paid as a small entity is the difference between the current fee amount (for other than a small entity) on the date the deficiency is paid in full and the amount of the previous erroneous (small entity) fee payment. The total deficiency payment owed is the sum of the individual deficiency owed amounts for each fee amount previously erroneously paid as a small entity. Where a fee paid in error as a small entity was subject to a fee decrease between the time the fee was paid in error and the time the deficiency is paid in full, the deficiency owed is equal to the amount (previously) paid in error;

(ii) Itemization of the deficiency payment. An itemization of the total deficiency payment is required. The itemization must include the following information:

(A) Each particular type of fee that was erroneously paid as a small entity, (e.g., basic statutory filing fee, two-month extension of time fee) along with the current fee amount for a non-small entity;

(B) The small entity fee actually paid, and when. This will permit the Office to differentiate, for example, between two one-month extension of time fees erroneously paid as a small entity but on different dates;

(C) The deficiency owed amount (for each fee erroneously paid); and

(D) The total deficiency payment owed, which is the sum or total of the individual deficiency owed amounts set forth in paragraph (c)(2)(ii)(C) of this section."

NOTE: 37 C.F.R. § 1.28(c)(3): "Failure to comply with requirements. If the requirements of paragraphs (c)(1) and (c)(2) of this section are not complied with, such failure will either: be treated as an authorization for the Office to process the deficiency payment and charge the processing fee set forth in § 1.17(i), or result in a requirement for compliance within a one-month non-extendable time period under § 1.136(a) to avoid the return of the fee deficiency paper, at the option of the Office."

4.

(complete the following applicable item(s))

<u>FEE(S) ERRONEOUSLY PAID AS A SMALL ENTITY</u>	<u>FEE ACTUALLY PAID AS A SMALL ENTITY</u>	<u>DEFICIENCY OWED*</u>
<input type="checkbox"/> Filing fee paid on _____	\$ _____	\$ _____
<input type="checkbox"/> Fee for excess claims (over 20) paid on _____	\$ _____	\$ _____
<input type="checkbox"/> Fee for multiple claims paid on _____	\$ _____	\$ _____
<input type="checkbox"/> Search fee paid on _____	\$ _____	\$ _____
<input type="checkbox"/> Examination fee.	\$ _____	\$ _____
<input type="checkbox"/> Extension of time fee paid on _____	\$ _____	\$ _____
<input type="checkbox"/> The issue fee paid on _____	\$ _____	\$ _____
<input checked="" type="checkbox"/> <u>first</u> maintenance fee (First, second or third) paid on <u>12/04/2007</u>	\$ <u>465.00</u>	\$ <u>515.00</u>
<input type="checkbox"/> Other:		

**WARNING:** "The deficiency owed for each previous fee erroneously paid as a small entity is the difference between the current fee amount (for other than a small entity) on the date the deficiency is paid in full and the amount of the previous erroneous (small entity) fee payment. The total deficiency payment owed is the sum of the individual deficiency owed amounts for each fee amount previously erroneously paid as a small entity. Where a fee paid in error as a small entity was subject to a fee decrease between the time the fee was paid in error and the time the deficiency is paid in full, the deficiency owed is equal to the amount (previously) paid in error. . ." 37 C.F.R. § 1.28(c)(2)(i).

**NOTE:** 37 C.F.R. § 1.28(b)(2): "The date when a deficiency payment is paid in full determines the amount of deficiency that is due pursuant to paragraph (c) of this section."

**Total deficiency owed \$** 515.00

**NOTE:** 37 C.F.R. 1.28(d): "Payment of deficiency operates as notification of loss of status. Any deficiency payment (based on a previous erroneous payment of a small entity fee) submitted under paragraph (c) of this section will be treated under § 1.27(g)(2) as a notification of a loss of entitlement to small entity status."

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**Payment of Deficiency**

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5. The total deficiency owed is paid as follows:

- ☒ Attached is a ☒ check ☐ money order in the amount of \$ 515.00  
☒ Authorization is hereby made to charge the amount of \$ \_\_\_\_\_  
☒ to Deposit Account No. 18-2222  
☐ to Credit card as shown on the attached credit card information authorization form PTO-2038.

**WARNING:** Credit card information should *not* be included on this form as it may become public.


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Customer No.: 021907

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**SIGNATURE OF PRACTITIONER**

Thomas I. Rozsa

(type or print name of practitioner)

ROZSA LAW GROUP LC

18757 Burbank Blvd., Suite 220

P.O. Address

Tarzana, CA 91356-3346

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**SIGNATURE OF PRACTITIONER**

Thomas I. Rozsa

(type or print name of practitioner)

ROZSA LAW GROUP LC

18757 Burbank Blvd., Suite 220

P.O. Address

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